IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.536 OF 2007
IN
APPEAL NO.404 OF 2002
IN
COMPANY PETITION NO.344 OF 2001

Shri.Ram Parshad Mehra & Anr. .. Appellants
V/s
Satish S/o Janak Raj Kapoor & Ors. .. Respondents

Mr.Arvind Mehra Applicant-in-person (Respondent No.4).

Mrs.V.V.Thorat i/by Ms.Prachi Tatake for Respondent Nos.1, 2, 3 & 5.

CORAM : DR.S.RADHAKRISHNAN, &
ANOOP V.MOHTA, JJ.

DATE : 18th December 2007.

P.C.:

1. This Chamber Summons has been taken out by the Applicant-Respondent No.4 (Shri Arvind Mehra), who is also the Respondent No.4 in the main Petition and who is the son of Appellant Nos.1 & 2 in the above Appeal. We have heard the Applicant-Respondent No.4 (Shri.Arvind Mehra) who is appearing in person, and we have also heard the learned Advocate Mrs.Thorat appearing on behalf of Respondent Nos. 1, 2, 3 & 5.

2. By this Chamber Summons, the Applicant-Respondent No.4 (Shri.Arvind Mehra) is seeking a permission that, he be permitted to be brought on record and substituted as legal representative of Appellant Nos.1 & 2, and that he be permitted to continue to prosecute the above Appeal as the legal representative of Appellant Nos.1 &

2. The present Applicant-Respondent No.4 has also prayed for condonation of 480 days delay caused in filing this Chamber Summons, and has also prayed for restoration of the Appeal as the same has abated. The Applicant-Respondent No.4 has also prayed that, after substitution of Respondent No.4 in place of the Appellants, his name as Respondent No.4 be deleted from the title of the Appeal.

3. Perused the affidavit in support of the Chamber Summons wherein it is pointed out by the Applicant-Respondent No.4 that as soon his father (Appellant No.1-Shri.Ram Parshad Mehra) died on 23rd April, 2003, the Chamber Summons No.943/2003 was taken out by their Advocates for substituting his name in the above Appeal and the Petition. However, it appears that though the said Chamber Summons No.943/2003 was taken out within time, the former Advocates of the Appellants did not take proper steps to get the Chamber Summons disposed of, and ultimately they were discharged in mid-2004, and thereafter another set of Advocates were appointed. It appears that even the new Advocates had not taken proper steps. The Applicant-Respondent No.4 has stated that his mother being the Appellant No.2 was hospitalised with the paralytic stroke on 31st August, 2004 who died on 11th August, 2005. The Applicant-Respondent No.4 submits that during the period of his mother’s illness he could not pursue with the

Advocates, and that he had to resolve various other financial and other problems also. The affidavit in support sets out in detail (in Paragraph Nos.3 to 17), various circumstances explaining & describing the delay caused in filing this Chamber Summons.

4. In support of his submission for condonation of delay caused in filing this Chamber Summons and for grant of other reliefs, the Applicant-Respondent No.4 has referred to and relied upon two judgments of the Hon'ble Supreme Court. The Respondent No.4 firstly referred to the judgment in the case of **N.Balkrishnan V/s.M.Krishnamurthy - (1998) 7 SCC 123,** wherein the relevant observations of the Hon'ble Supreme Court are as under:

> "It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of malafides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor."
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> "Appellant's conduct does not on the whole warrant to castigate him as an irresponsible litigant. What he did in defending the suit was not very much far from what a litigant would broadly do. Of course, it may be said that he should have been more vigilant by visiting his advoacte at short intervals to check up the progress of the litigation. But during these days when everybody is fully occupied with his own avocation of life an omission to adopt such extra vigilance need not be used as a ground to depict him as a litigant not aware of his responsibilities, and to visit him with drastic consequences."
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> "This Court has held that the words "sufficient

> cause" under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide **Shakuntala Devi Jain V/s.Kuntal Kumari (AIR 1969 SC 575) and State of West Bengal V/s.The Administrator, Howrah Municipality (AIR 1972 SC 749).**

. The Respondent No.4 also referred to and relied upon another judgment of the Hon'ble Supreme Court in the case of **Collector, Land Acquisition & Anr. V/s.Mst.Katiji & Ors.- 1987 (1) SCALE**, wherein the Supreme Court has observed as under:-

> "When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non deliberate delay."

5. To this Chamber Summons, the affidavit in reply has been filed by the Respondent No.2-Mrs.Sharda Kapoor, for and on behalf of Respondent Nos.1 to 3 and 5, opposing the grant of reliefs. Mrs.Thorat, the learned Counsel, who has appeared on their behalf has referred to the aforesaid affidavit in reply and the other additional affidavits.

6. In the present Chamber Summons No.536/2007, the Respondent No.4 has sought for a leave to withdraw the Chamber Summons No.943/2003, and has also sought for a leave to claim the reliefs which were claimed in the said Chamber Summons No.943/2003. It may be noted here that by our order dated 3rd December, 2007 we had

allowed the Respondent No.4 to withdraw the Chamber Summons No.943/2003 with liberty to pray for reliefs claimed in the said Chamber Summons in the present Chamber Summons No.536/2007. Our order dated 3rd December, 2007 passed in the aforesaid Chamber Summons No.943/2003 reads as under:-

> "Heard the learned Counsel for Respondent Nos.1 to 3 and 5 and the Appellant in-person who is Respondent No.4 in the above. The Respondent No.4 states that his mother has expired subsequent to taking out the aforesaid Chamber Summons No.943 of 2003. He seeks leave to withdraw the said Chamber Summons and pursue the comprehensive Chamber Summons No.536 of 2007. In view thereof, the Chamber Summons No.943 of 2003 is allowed to be withdrawn and dismissed as such, however with the liberty to pray for reliefs claimed in the said Chamber Summons, as incorporated in Chamber Summons No.536 of 2007."

7. The main objection in the affidvit in reply is that the Respondent No.4 could have got himself substituted during the lifetime of the Appellant Nos.1 & 2. From the perusal of the entire affidvit in reply it appears that the Respondent Nos.1 to 3 & 5 are not at all keen in proceeding with the aforesaid Appeal as it appears that they were not in good terms with the Appellant Nos.1 & 2. Even in the appeal, it appears that only the Respondent No.4 was supporting the Appellants.

8. The additional affidavits filed on behalf of Respondent Nos.1 to 3 and 5 mainly deal with the conduct of Respondent No.4 in treating his parents etc., which is really not relevant for the purpose of deciding the

present Chamber Summons.

9. Having regard to the facts and circumstances set out in detail in the affidavit in support of the present Chamber Summons and in the light of the aforesaid two judgments of the Supreme Court referred to and relied upon by the Respondent No.4, we are inclined to condone the delay caused in filing this Chamber Summons, to set aside the abatement, to restore the Appeal and to permit the Respondent No.4 to be brought on record & substituted as legal representative of the Appellant Nos.1 & 2. There is no case of negligence, inaction or want of bonafides on the part of the Respondent No.4.

10. Accordingly, the present Chamber Summons No.536/2007 is made absolute in terms of prayer clauses A, B, C, D, E, F & G, however with no order as to costs. Amendment be carried out within a period of four weeks from today.

(ANOOP V.MOHTA, J.) **(DR.S.RADHAKRISHNAN, J.)**